Reserved.

COURT NO. 3

Criminal Misc. Application No. 228 of 2002.

Sri Ravindra Kumar Jain ….Applicant

Vs.

State of Uttaranchal & others …Respondents

……..

Hon'ble Irshad Hussain, J.

This petition under section 482 of the Code of Criminal Procedure (herein after for short 'Code') has been filed for quashing the first information report dated 07.07.2002 lodged by the opposite party no.3 under sections 420, 467, 468 and 471 of I.P.C., P.S. Claimant Town, District Dehradun.

Heard Sri Ram Ji Srivastava, learned counsel for applicant and learned A.G.A. for respondents.

Briefly stated the facts of the case are that petitioner is one of the two witnesses to a power of attorney dated 1.1.2001 purporting to have been executed by one Mohd. Ali in favour of Anand Singh who under the authority of this power of attorney executed sale-deeds of the plots of land in favour of Smt. Rajni Dhyani and Sri Ravi Shankar Bansal. When respondent no. 3 Rais Ahmad nephew of above named Mohd. Ali came to know about the transactions and it transpired that a fictitious and forged power of attorney was prepared although Mohd. Ali had died in the year 1982 and prior to his death he had executed a

registered will in the year 1981 in favour of the cousin brother of respondent no.3. Alleging that the forged and fictitious power of attorney was prepared to take undue benefit and advantage by playing fraud, the respondent no.3 lodged an F.I.R. on 7.7.2002 against the so-called attorney Anand Singh and two witnesses of the forged power of attorney. Petitioner as mentioned above is one of the witness to the said power of attorney and he has filed the petition for quashing the F.I.R.

learned counsel for the petitioner submitted that the petitioner himself was misled by his acquaintance Anand Singh in obtaining his signatures as a witness of the power of attorney and when the petitioner came to know about the illegal designs of the said attorney, an application was sent to the Sub Registrar-II, Dehradun on 5.5.2001 stating therein that his signatures as a witness were obtained by misrepresentation and his signatures as a witness may be cancelled. The copy of the application dated 5.5.2001 is Annexure-2 to the affidavit of the petitioner. Annexure-3 is said to be the postal receipt of registered letter also sent to the Sub Registrar. Pointing out to these documents and averments of the affidavit of the petitioner learned counsel argued that the petitioner is innocent and since he has not committed any crime, the first information report against him has to be quashed.

On the other hand learned A.G.A. pointed out that the petitioner has in fact conspired with the other witness of the forged power of attorney and also the so-called attorney Anand Singh with intention to play fraud upon the prospective purchaser of the land by utilizing the forged power of attorney and that the allegations made in the F.I.R. are inherently probable and at this stage it cannot be safely said that the petitioner knew noting about the forged document and was misled to put his signatures as a witness to the power of attorney.

Considering the facts and circumstances of the case and keeping in view the submission made by the learned counsel for the parties it need to be pointed out at the outset that the law is well settled regarding interference by the High Court with an investigation

of a case or in the matter of quashing of F.I.R. In the leading case of **State of Haryana v. Bhajan Lal and others, 1992, Criminal Law Journal, 527**, the apex court has laid down the guidelines for stalling the investigation by the police in exercise of the extraordinary powers under Article 226 or inherent power under section 482 of the Code. The apex court has held that the power of quashing a criminal proceeding should be exercised sparingly and with circumspection and that too in the rarest of rare cases. Having considered the facts of the instant case it is obvious that the present case is not covered by the relevant guidelines as laid down in the **Bhajan Lal's case** (Supra).

The reasons are that the allegation as spelt out in the F.I.R. are categorical and inherently probable in view of the fact that prima facie a witness to a dead of power of attorney would not append his signature unless he knew the executant personally. Although petitioner is said to have sent an application to Sub Registrar on 5.5.2001, Annexure-2 to his affidavit but it is evident from this application that he did not assert that he had mistaken the identity of the person shown as the executant of the power of attorney in favour of his acquaintance Anand Singh. If Mohd. Ali so-called executant was not known to him he should not have agreed to be the witness of the deed of power of attorney and in the peculiar circumstances of the case it prima facie appear that he had knowledge of everything, dubious transaction and fictitious preparation of power of attorney in concert with his acquaintance Anand Singh and another. The facts and circumstances at this stage prima facie rule out the possibility of the petitioner being misled by Anand Singh to append his signatures on the deed of power of attorney.

Respondent-State has brought on record copy of another F.I.R. dated 29.7.2002, Annexure-2 to the counter affidavit showing that petitioner with others was also arraigned as an accused in connection with same forged power of attorney. Anand Singh the alleged attorney had executed sale deeds of the land and one of the purchaser Smt. Rajni Dhyani a member of a society was examined by the investigating officer in connection with the investigation of another

case against the said of attorney and petitioner. Annexure-1 to the counter affidavit is the copy of the statement which also indicate that forged power of attorney was utilized to make sale of the land.

Learned counsel for the petitioner submitted that Smt. Rajni Dhyani had herself not filed any F.I.R. and further that according to her own version Anand Singh had returned part of the consideration money indicating that the power of attorney was not being utilized to cheat the purchasers of the land said to be belonging to Mohd. Ali and that in view of these facts it is prima facie evident that petitioner was innocent and has not committed any offence of forgery in regard to the deed of power attorney. Having considered another F.I.R. and the statement of Smt. Rajni Dhyani it is prima facie established that a forged and factitious power of attorney was prepared and that the petitioner had acted in concert with the other witness and so-called attorney of the said forged document.

In view of above it is apparently clear that the F.I.R. in question even if it be taken on its face value it prima facie discloses the commission of offences of forgery etc. and thus it is not one of the rarest of rare cases in which power under section 482 of the Code can be exercised to quash the F.I.R. Petition being devoid of merit is liable to be dismissed.

Petition is dismissed accordingly.

(Irshad Hussain, J.)

19.04.2003/B.